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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,516	03/19/2004	Arun Kwangil Iyengar	YOR920040025US1	7509

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Ryan, Mason & Lewis, LLP
90 Forest Avenue
Locust Valley, NY 11560

EXAMINER	
PHUNG, LUAT	
ART UNIT	PAPER NUMBER
2416	
MAIL DATE	DELIVERY MODE
02/19/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/804,516	**Applicant(s)** IYENGAR ET AL.	
	Examiner LUAT PHUNG	**Art Unit** 2416	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-25*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Ricky Ngo/
Supervisory Patent Examiner, Art Unit 2416

Continuation of 13. Other: In response to the applicants' remarks that prior art references fail to teach the claimed limitations, examiner respectfully disagrees.

On page 3, applicants argue that:
There is absolutely no disclosure in Colby reference of determining a schedule for submitting (i.e., scheduling submission) the intercepted request to this best-fit server.
There is no notion in Colby of scheduling submissions of requests to any server whatsoever.
Page 4:
Any consideration of QoS requirements in Colby is to "identify the content" of the request, not to "schedule submission of the request to a server".
Kokot does not assign QoS classes to clients but rather packet flows.
The examiner respectfully disagrees.
Colby discloses scheduling submission of the request to the at least one server (col. 2, lines 54+; forwarding request to server that is well-suited to serve the content request) based on: (ii) a response target associated with the QoS class (col. 2, lines 54+; col. 9, lines 25-32; col. 21, lines 50-51; server being chosen based on the type of content requested, QoS requirements, etc.; identifying the nature of the requested content involves deducing QoS requirements which include delay, defined as maximum delay suitable for retrieving a particular content; Table 1 showing QoS classes and corresponding delays); and (iii) an estimated response time associated with the at least one server (col. 22, lines 10-11; claims 1, 31, 32; selecting server based on metric descriptive of response time of at least one of the candidate servers).
Colby discloses all of the subject matter except (i) a quality-of-service (QoS) class assigned to a client from which the request originated.
Kokot in view of Kolby from the same or similar fields of endeavor discloses a QoS class assigned to a subscriber from which the packet flow originated (para. 116; a "service profile for a subscriber may include, for example, one or more general QoS classes for packet flows originating from … a subscriber device associated with the subscriber"). Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to combine Colby's method of processing a request based on QoS flow classes with Kokot's QoS subscriber classes by assigning the QoS classes to the clients and scheduling the request based on these QoS classes. The motivation for doing so would have been to ensure proper level of quality for the service request.

On page 9 applicants argue that:
There is no legally-sufficient motivation that appears in either Colby or Kokot.
Applicants assert the same deficiency arguments presented in their previous response dated May 5, 2008.
Examiner respectfully disagrees.
In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references involve determination of routes for a packet requesting service through a network (Colby, col. 2, lines 54+: when a client in an IP network makes a content request, the request is intercepted by a content-aware flow switch, which seamlessly forwards the content request to a server that is well-suited to server the content request; Kokot, para. 116: router controls packet forwarding according to service profile, which may identify, for examples, routes or packets flows through a network).
The arguments presented in May 5, 2008 have been addressed in the subsequent office action sent May 30, 2008, to which applicants are requested to refer for responses.

On page 10 applicants argue that:
Bender does not schedule jobs based on a "response target" associated with a particular QoS class.
Examiner respectfully disagrees.
Colby and Kokot disclose scheduling jobs based on "response target" associated with a particular QoS class as recited in the rejection of claim 1. Specifically Colby discloses scheduling submission of the request to the at least one server (col. 2, lines 54+; forwarding request to server that is well-suited to serve the content request) based on: (ii) a response target associated with the QoS class (col. 2, lines 54+; col. 9, lines 25-32; col. 21, lines 50-51; server being chosen based on the type of content requested, QoS requirements, etc.; identifying the nature of the requested content involves deducing QoS requirements which include delay, defined as maximum delay suitable for retrieving a particular content; Table 1 showing QoS classes and corresponding delays).
Kokot discloses a QoS class assigned to a subscriber from which the packet flow originated (para. 116; a "service profile for a subscriber may include, for example, one or more general QoS classes for packet flows originating from … a subscriber device associated with the subscriber").
Bender in view of Colby and Kokot from the same or similar fields of endeavor discloses a server which employs a pre-emptive setting not continuously processing a request, but scheduling them according to an earliest deadline first methodology, by alternately processing the request with the earliest deadline first, followed by that with the next earliest deadline, and so on (col. 4, lines 52-58; col. 5, lines 27-35). Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to combine the request processing method of Colby and Kokot with the pre-emptive scheduling method of Bender by pre-empting the request having a lower QoS class with the request having a higher QoS class, i.e., schedule jobs based on response target suggested by Colby, associated with a particular QoS class as suggested by both Colby and Kokot. The motivation for using pre-emptive procedure would have been to prioritize requests according to response target..